In the High Court of Punjab and Haryana, Chandigarh.

C.M. No.18205 of 2006 and
CWP No. 7024 of 2006

Date of Decision: 2.11.2006

Kuldip Kaur

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. B.R. Mahajan, Advocate
for the petitioner.

Mr. Ashok Aggarwal, Addl. A.G., Punjab
for the respondents.

...

J.S. Khehar, J. (Oral).

C.M. No.18205 of 2006.

CM is allowed. Replication is taken on record subject to all just exceptions.

C.W.P. No.7024 of 2006.

The petitioner is an employee of the Public Relations Department, Punjab. She was posted as a Senior Assistant in the office of the District Public Relations Officer, Ludhiana. The impugned order dated 1.5.2006 was passed, transferring the petitioner from Ludhiana to Nawanshahar. The aforestated order of transfer is subject matter of challenge at the hands of the petitioner.

The primary contention of the learned counsel for the petitioner on the first date of hearing, as well as today, is, that the petitioner is to retire on attaining the age of superannuation on 31.3.2007, and that, the impugned order of her transfer has been passed merely ten months before her retirement. It is in the backdrop of the aforesaid factual position, that this Court passed an interim order dated 8.5.2006, whereby, the operation of the impugned order of transfer dated 1.5.2006 was stayed, qua the petitioner. In view of the aforesaid order, the petitioner has remained posted at Ludhiana, during the pendency of the instant writ petition.

A detailed written statement has been filed in response to the averments made in the instant writ petition. In order to contest the claim of the petitioner, learned counsel for the respondents, has primarily relied on the complaints made against the petitioner, copies whereof have been placed on the record of this case as Annexures R-1 and R-2. We have perused Annexures R-1 and R-2. These complaints are at the hands of the petitioner's subordinates, wherein the sole allegation is, that her behaviour with the staff is insulting.

Reliance has also been placed on the explanation of the petitioner, sought through a communication dated 12.9.2005 (Annexure R-3), to which the petitioner did not submit her reply, but she was warned and

asked to correct her behaviour, by an order dated 14.10.2005 (Annexure R-4). A perusal of the communication dated 12.9.2005, seeking the explanation of the petitioner, reveals the use of insulting language and misbehaviour in the office. Without any particulars and details, the aforesaid can hardly be the basis or cause for transferring the petitioner.

The explanation of the petitioner was again sought through a communication dated 29.5.2005 for having purchased stationary, valuing Rs.300/- and Rs.140/-, without pre-sanction. For her aforesaid action, the petitioner was again warned and ordered to improve her work, by an order dated 13.10.2005. From the action taken against the petitioner, it is apparent, that the purchase made by the petitioner was subsequently sanctioned. The only fault of the petitioner being, that she did not get pre-sanction from the Drawing and Disbursing Officer before effecting the purchase in question, can also not be an acceptable cause for the petitioner's transfer.

The most interesting explanation is the one, sought from the petitioner through a communication dated 26.9.2005, wherein the petitioner was required to prepare a file in connection with the visit of the Prime Minister, to Ludhiana on 23.9.2005. The solitary allegation being, that pages 2 to 8 of the file had no concern with the visit of the Prime Minister. For the aforesaid action of the petitioner, the petitioner was warned and asked to improve her work by an order dated 18.10.2005. This action taken against the petitioner, in the circumstances of the case, to say the least, does not seem to be bonafide.

Yet again, the explanation of the petitioner was sought through a communication dated 29.11.2005, for non-release of a TA bill of an

employee which was submitted in the office of the respondents on 13.9.2005. On the basis of the aforesaid allegation levelled against the petitioner, her explanation was sought. By an order dated 7.12.2005, the petitioner was again warned and directed not to repeat such an act of negligence in future.

Yet another explanation of the petitioner was sought through a communication dated 9.9.2005 (Annexure R-11), wherein it was alleged, that the District Public Relations Officer, Ludhiana, had telephoned the petitioner at 11.30 AM and found her absent from her seat. In furtherance of the aforesaid communication dated 9.9.2005, the petitioner was again warned and directed to improve her behaviour, by an order dated 7.12.2005.

Learned counsel for the respondents also relies on the decision rendered by the Apex Court in State of U.P. and others Vs. Gobardhan Lal, AIR 2004 SC 2165, wherein the Supreme Court observed as under:-

> "8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be

> interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. this Court has often reiterated that the order of transfer made in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

In so far as, the submissions of the learned counsel for the respondents are concerned, the same are sought to be repudiated through the averments contained in paragraph 6 of the replication. Paragraph 6 of the Replication is reproduced hereunder:-

> "6. Para 6 of the written statement is wrong and denied and averments made in the corresponding para are reiterated. The impugned order of transfer is in violation of the policy decision dated 4.4.2006 (P4). It is wrong and denied that the petitioner is not yet fit to handle hard ad quick duty at Ludhiana. it is

further wrong and denied that the petitioner is inefficient lady. It is further wrong that co-employees have complained against her. The petitioner has been working at Ludhiana since 1987 and there has never been any complaint against her work and conduct, either by her superiors or by any co-employees. It was only after joining of the present District Public Relations Officer, Ludhiana, groupism was created among employees and they were forced to make complaints against each other. All complaints and orders Annexures R1 to R12 are from September to December 2005, whereas the petitioner is posted at Ludhiana for the last more than 18 years. It si wrong and denied that the petitioner has no interest in discharging her duties efficiently and attentively and she used to neglect the work. The petitioner has been performing her duties to the best of her ability. Warnings/explanations (Ann.R-5 to R-12) are malafide issued within the span of 4 months from September to December 2005. The petitioner has been posted at Ludhiana since 1987 and there has never been any complaint against the work and conduct of the petitioner. It is wrong and denied that the petitioner has been provided with light work. It is further wrong and denied that the petitioner used to create trouble in the office. It is further wrong and denied that the petitioner has been transferred for smooth working of the office. The petitioner has been performing her duties efficiently and there had never been any complaint against her work and conduct. The orders, Annexures R-5 to R-12, are malafide issued within

a span of four months though the posted is posted at Ludhiana for the last more than 18 years."

From a collective analysis of the factual position, noticed hereinabove, specially in the background of the fact, that response of the petitioner contained in paragraph 6 of the replication, has not been denied, we are of the view, that the respondents in the instant case are making a deliberate attempt to sustain the impugned order dated 1.5.2006, by which the petitioner has been transferred. Ordinarily, this Court would not go into the intricacies of the factual position on issues of transfer. However, it is apparent on the basis of the record in this case, that trivial issues (as have been analysed hereinabove) have been blown out of proportion to sustain the impugned order of transfer. The reasons depicted and analysed hereinabove could never have been the basis of a bonafide order of transfer.

It also needs to be noticed, that the respondents have not disputed, that the petitioner is to retire on attaining the age of superannuation on 31.3.2007. As such, it is apparent, that the petitioner was to retire in just about 10 months from the date when the impugned order of transfer was passed. It is also not disputed, that the petitioner had undergone two heart surgeries, one on 27.12.2002 and the second on 14.4.2003 at Escorts Heart Institute and Research Centre, New Delhi, and that, she was discharged from the aforesaid hospital after the treatment on 24.4.2003. It has also not been disputed, that the petitioner is suffering from high blood pressure and is undergoing regular treatment for the same at Ludhiana.

In the background of the factual position noticed hereinabove, we are satisfied that the impugned order of transfer dated 1.5.2006 deserves

to be set aside. The same is, accordingly, set aside. Since the respondents have not acted bonafide in transferring the petitioner, as has been concluded hereinabove, we consider it just and appropriate to impose costs on the respondents. The instant writ petition is, accordingly, allowed with costs, which are quantified at Rs.5,000/-.

Disposed of accordingly.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

2.11.2006
sk/vig